IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1151 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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KANTABEN RANCHHODBHAI & 4 - Appellant(s)
Versus
PATEL BABABHAI BHIMDAS & 1 - Defendant(s)

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Appearance :
MR DC DAVE for Appellant(s) : 1,MR NN PRAJAPATI for Appellant(s) : 1 - 5.
MR HL JANI for Defendant(s) : 1,
MR KF DALAL for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 01/09/2006

ORAL JUDGMENT

1. This appeal at the instance of the original claimants against the award passed by the Motor Accident Claims Tribunal (Auxi) Mehsana dated 30.11.83 in Motor Accident Claim Petition No. 24/82 whereby the Tribunal is awarded a sum of Rs 50,000/- in view of the interest at the rate of 61% The petition was dismissed against the insurance company.

2. The case of the claimant is that Ranchhodbhai while driving the truck was thrown out of the truck as a result of which he sustained injuries and later on succumbed to the same. The legal heirs of the deceased has therefore filed the aforesaid claim petition. The said claim petition was dismissed against the insurance company. Hence the present appeal.

3. Learned advocate has contended that the learned Tribunal erred in coming to the conclusion that the Insurance company has not undertaken any contractual liability as per the policy of insurance to pay compensation to the owner-cum-driver of the tractor in question.

4. Learned advocate has contended that the judgment and award of the Tribunal so far as it does not make liable to the Insurance company for the payment of the compensation amount is illegal, contrary to the law laid down by the Hon'ble court in various jdugments of this Hon'ble court and therefore, to that extent the award of the tribunal requires to be

modified by this Hon'ble court.

5. As a result of hearing and perusal of the record it is found that the Tribunal has, after elaborate discussion, came to the definition that on the facts of the case the insurance company is not liable to satisfy the compensation. The Tribunal has held as under :

> “It becomes quite clear from the provisions of section 95 quoted as above that the statutory liability is only to the extent of the employment of the insured in respect of the tractor in question the use of which has been limited to only agricultural use. Now there is no statutory requirement to take insurance in respect of the driver who is not driving the vehicle involved in the accident in question in pursuance of the contract of employment then the statutory liability of the insurance company to indemnify the parties will not arise. It becomes quite clear from the terms and conditions of the policy of insurance and the same gets clarified as per encroachment No. 16 which form part of the policy of insurance that the insurance company has not undertaken any contractual liability as per the policy of insurance to pay compensation to the owner cum driver of the tractor in question. “

6. Nothing is pointed out that the Tribunal has committed any error in awarding lesser amount under any heads. No case is made out for enhancement. I

therefore do not find any merits in the appeal and the same is accordingly dismissed.

(K.S.Jhaveri,J)

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